

# **EXHIBIT D**

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**IN THE UNITED STATES DISTRICT COURT**

**FOR THE CENTRAL DISTRICT OF CALIFORNIA**

RALLY AUTO GROUP, INC.

Petitioner-Covered Dealership,

v.

GENERAL MOTORS, LLC

Respondent-Covered Manufacturer.

Case No. SACV10-01236 DOC (EX)

**PETITION TO MODIFY OR,  
 ALTERNATIVELY, VACATE AN  
 ARBITRATION AWARD**

**(Hearing and Oral Argument  
 Requested)**

The Petitioner-Covered Dealership Rally Auto Group, Inc. hereby submits this Petition to modify or, alternatively, to vacate a June 8, 2010 American Arbitration Association Award ("Award") involving Respondent-Covered Manufacturer, General Motors, LLC.

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1 **1. PARTIES**

2 Petitioner Rally Auto Group, Inc. ("Rally") is an automobile dealership located at 39012  
3 Carriage Way, Palmdale, California 93551. Rally is a "covered dealership," as defined in  
4 Section 747(a)(2) of the Consolidated Appropriations Act of 2010 (Public Law 111-117) (the  
5 "Act" or "Section 747"), enacted December 16, 2009. (A true and correct copy of the Act is  
6 attached as Exhibit "1" to Petitioner's Appendix of Authorities in Support of Petition to Modify  
7 / Vacate Arbitration Award and Request for Judicial Notice filed concurrently herewith  
8 [hereinafter "Appendix"].)

9 Respondent General Motors, LLC ("GM") is the current owner of the General Motors  
10 automobile manufacturing business and has its principal place of business in Detroit, Michigan.  
11 GM is a "covered manufacturer" as defined by Section 747(a)(1) of the Act.

12 **2. JURISDICTION**

13 While the Federal Arbitration Act's ("FAA") standards apply to this dispute, the FAA  
14 "bestow[s] no federal jurisdiction but rather require[s] an independent jurisdictional basis."  
15 *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 128 S.Ct. 1396, 1402, 170 L.Ed.2d 254  
16 (2008), citing *Moses H. Cone*, 460 U.S. at 25 n. 32, 103 S.Ct. 927. The District Court,  
17 however, has federal question jurisdiction in this case under 27 U.S.C. § 1331 because it  
18 involves Section 747 of the Act, a law enacted by Congress (Public Law 111-117). (Appendix  
19 Exhibit "1.")

20 **3. VENUE**

21 Venue is proper in this Court, pursuant to 9 U.S.C.A. § 10 and § 11, because the  
22 Arbitration was conducted in the City of Orange and the Award at issue was made within the  
23 Court's geographical district.

24 **4. BACKGROUND**

25 **A. Section 747 of the Consolidated Appropriations Act of 2010**

26 The underlying arbitration proceeding was timely initiated pursuant to Section 747 of the  
27 Consolidated Appropriations Act of 2010 (Public Law 111-117, 123 Stat. 3034 (2009))  
28 ("Section 747" or "Act" [Appendix Exhibit "1"]). The genesis of Section 747 was the voluntary

1 petitions for bankruptcy filed by GM and Chrysler Corporation in the summer of 2009. Both  
2 GM and Chrysler previously applied for and received loans from the U.S. Government through  
3 the Troubled Asset Relief Program ("TARP") emergency funding program.

4 In the bankruptcy proceedings, both GM and Chrysler used a provision in the Bankruptcy  
5 Code to circumvent state franchise laws and summarily terminate or "wind down" (under the  
6 threat of termination) the franchises of over 2,000 independent auto dealers throughout the  
7 United States.

8 The House of Representatives, Committee on the Judiciary, held three (3) days of hearings  
9 on the "*Ramifications of Auto Industry Bankruptcies*." The stated purpose of the hearings was  
10 to review "the ramifications of auto bankruptcies and their effect on dealers and other issues"  
11 (emphasis added).<sup>1</sup> Other Congressional committees also conducted investigations, hearings,  
12 and gathered evidence regarding the manufacturer's "expedited bankruptcy proceedings."<sup>2</sup>  
13 Congress passed Section 747 of the Act because of the "bipartisanship concern in Congress of  
14 the mass closure of GM and Chrysler dealerships." (Emphasis added.) (*Id.*)

15 Recently, on July 19, 2009, the Office of the Special Inspector General for TARP  
16 ("SIGTARP") confirmed Congress' concerns in a report entitled, "*Factors Effecting the*  
17 *Decisions of General Motors and Chrysler to Reduce Their Dealership Networks*." SIGTARP

18  
19  
20 <sup>1</sup> House of Representatives, Subcommittee on Commercial and Administrative  
21 Law, Committee of the Judiciary, "*Ramifications of Auto Industry Bankruptcies (Part*  
*III*)," Serial No. 111-55, p. 1 (July 22, 2009) [Appendix Exhibit "7"; this subcommittee also  
held hearings on May 21, 2009, and July 21, 2009].

22 <sup>2</sup> June 3, 2009, State Senate Commerce Committee-Full Committee [Appendix  
23 Exhibit "6"]:

24 ***GM And Chrysler Dealership Closures: Protecting Dealers and***  
25 ***Consumers;***

26 June 10, 2009, Senate Banking Committee-Full Committee:

27 ***The State of the Domestic Automobile Industry: Impact of Federal***  
28 ***Assistance;***

June 12, 2009, House Energy and Commerce Committee-Subcommittee on  
Oversight, Investigations [Appendix Exhibit "5"]:

***GM and Chrysler Dealership Closures and Restructuring;***

September 16, 2009, House Small Business Committee-Subcommittee on  
Rural Development, Entrepreneurship and Trade:

***The Role of Automobile Dealerships in Rural Economies.***

1 concluded that its review “demonstrates that GM did not consistently follow its stated criteria”  
2 regarding the wind-down and termination of dealerships. (Appendix Exhibit “4,” p. 30.)  
3 SIGTARP also found, just as troubling, the fact that GM had “little or no documentation of the  
4 decision-making process to terminate or retain dealerships... .” (*Id.*) The SIGTARP report also  
5 held that GM’s acceleration of dealership closings “was not done with any explicit cost savings  
6 to the manufacturer in mind.” (Appendix Exhibit “4,” p. 29.)

7 It is precisely because of the arbitrary and capricious actions of GM and Chrysler in the  
8 Bankruptcy Court, after acceptance of Federal TARP loans, that Section 747 mandated that any  
9 manufacturer who accepted money from the Federal government had to provide the “specific  
10 criteria” for their rejection or wind-down of dealerships. The Act further required these  
11 American Arbitration Association (“AAA”) proceedings, if a dealer made demand on the  
12 manufacturer, for a hearing before a neutral arbitrator to protect the parties’ due process rights.

13 Section 747(b) states “[A] covered dealership that was not lawfully terminated under  
14 applicable state law on or before April 29, 2009, shall have the right to seek, through binding  
15 arbitration, continuation or reinstatement of a franchise agreement... .” The Petitioner herein  
16 was not lawfully terminated and sought arbitration. That legal prerequisite to these proceedings  
17 has been met.

18 Section 747(c) provides a legal and factual prerequisite upon the covered manufacturer  
19 (*i.e.* GM): provide the covered dealer, within thirty (30) days of the enactment of the Act,  
20 “specific criteria” as to why the dealer was terminated. The Congressional Record explained:

21 “We intend this process to provide transparency and avoid the  
22 excessive costs and delays of litigation and discovery disputes. **The**  
23 **manufacturer should provide the respective covered dealers with**  
24 **each and every detail and criteria related to the evaluations of the**  
25 **dealership** and the decisions to terminate, not assign, not renew or  
discontinue. It is anticipated that the manufacturers will be  
cooperative and forthcoming and that all relevant information will be  
provided promptly.”

26 Congressional Record-House, H14477 (December 10, 2009) [Appendix Exhibit “2”].  
27 (Emphasis added.) There must be compliance with the legal and factual prerequisites in order  
28 to frame the issues at the arbitration hearing.

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The Federal legislation is clear that there is a tri-partite balancing test, which must be performed by the arbitrator, regarding “the economic interest of the covered dealership, the economic interest of the covered manufacturer, and the economic interest of the public at large.” Section 747 (d). The Act sets forth seven (7) required factors<sup>3</sup> that the arbitrator must consider AND “that the covered dealership may present any relevant information during the arbitration.” Section 747(d). The law provides the remedy of “continuation,” as well as “reinstatement,” of the covered dealership’s franchise agreement. Section 747(b) and (d).

Petitioner sought the remedy of “continuation” as well as “reinstatement” or “addition” of the covered dealership’s franchise agreement pursuant to Section 747(b) and (e) of the Act.

#### B. Procedural and Factual History

On January 13, 2010, GM provided its required notice regarding the specific criteria which it used to issue the covered dealership (*i.e.* Rally) a wind-down agreement for its Chevrolet, Buick, Pontiac, GMC, and Cadillac brands. The only two (2) criteria listed were as follows: “2008 overall DPS total dealership score under 70” and “2008 overall RSI total dealership score under 70.”

Rally timely commenced an arbitration with AAA. The matter was assigned AAA Case No. 72-532-01370-09 and Arbitrator Richard Mainland. Testimony was heard at the hearings held on May 13, 14, and 17, 2010. The parties submitted closing briefs on May 28, 2010.

#### Award in Favor of Rally

In this matter, the Arbitrator determined that Rally exceeded GM’s publicly stated and sworn criteria (*i.e.* DPS) for terminating the covered dealership, based upon the Dealer

<sup>3</sup> “The factors considered by the arbitrator shall include:

- (1) the covered dealership’s profitability in 2006, 2007, 2008, and 2009,
- (2) the covered manufacturer’s overall business plan,
- (3) the covered dealership’s current economic viability,
- (4) the covered dealership’s satisfaction of the performance objectives established pursuant to the applicable franchise agreement,
- (5) the demographic and geographic characteristics of the covered dealership’s market territory,
- (6) the covered dealership’s performance in relation to the criteria used by the covered manufacturer to terminate, not renew, not assume or not assign the covered dealership’s franchise agreement, and
- (7) the length of experience of the covered dealership.” (Section 747(d).)

1 Performance Score (“DPS”) being below the 70 DPS index average. (Appendix Exhibit “8,”  
2 p. 4.) The Award held that “Rally’s DPS score was approximately 85.” (Appendix Exhibit  
3 “8,” p. 4.) Rally should not have been given a wind-down agreement based on GM’s stated  
4 specific criteria. The Award’s calculation of Rally’s DPS score included all five (5) brands of  
5 the covered dealership: Chevrolet, Buick, Pontiac, GMC, and Cadillac. The Rally dealership  
6 has one (1) GM Business Activity Code for all five (5) GM brands. The Rally dealership has  
7 one GM Dealer Sales and Service Agreement which allows it to sell and service all five (5)  
8 brands. The Rally dealership submits one (1) Operating Statement to GM every month. The  
9 Rally dealership is evaluated by GM (*i.e.* profitability, working capital, sales and service  
10 satisfaction, etc.) as one (1) dealership. The Award should be modified and/or vacated  
11 regarding the *dicta* attempting to take the Chevrolet brand from the covered dealership’s  
12 franchise and give it to a former Saturn dealer. (Appendix Exhibit “8,” p. 4.)

#### 13 **Award Exceeds Powers and Scope of Authority**

14 On June 8, 2010, AAA disseminated Arbitrator Richard Mainland’s Award to the parties.  
15 (Appendix Exhibit “8.”) The Award held that the covered dealership (*i.e.* Rally) “shall be  
16 added to the dealer networks of General Motors, LLC, as to the Cadillac, Buick and GMC  
17 brands, in the manner provided for by the Act and in accordance with the terms and conditions  
18 of the Act.” (Appendix Exhibit “8,” p. 2.) The Award also determined that the Chevrolet brand  
19 should be continued in Rally’s market. However, the Arbitrator exceeded the scope of his  
20 authority by attempting to **remove** the Chevrolet brand from the “covered dealership” and give  
21 it to a non-party, a former Saturn dealer.<sup>4</sup>

#### 22 **Award on Matters Not Submitted**

23 The Act does not allow for the splitting of brands within the “covered dealership” and  
24 only grants the Arbitrator the authority to “decide, based on that balancing, whether or not the  
25 covered dealership should be added to the dealer network of the covered manufacturer.”  
26 (Emphasis added.) (Section 747(d).) The Act defined “covered dealership” as “an automobile  
27

28 <sup>4</sup> Specifically, the Award stated that, with respect to the Chevrolet brand Rally  
“shall not be added to the dealer network of General Motors, LLC.” (*Id.*)

1 dealership that had a franchise agreement for the sale and service of vehicles of a brand or  
2 brands with a covered manufacturer." (Emphasis added.) (Section 747(a)(2).) Congress  
3 intended that the "covered dealership," with or without all brands desired by the manufacturer,  
4 should be added back to the dealer network.<sup>5</sup> The Award held that Chevrolet should be added  
5 back to GM's dealer network. Thus, Rally should keep its Chevrolet brand.

6 **Award's Remedy Beyond Authority Because Involves Non-Party**

7 The Arbitrator exceeded the scope of the authority granted by Section 747(d) of the Act  
8 and it must be modified and/or vacated in part to conform with the Federal law. The Award  
9 impermissibly provides the remedy of taking Rally's Chevrolet brand and giving it to "GM's  
10 former Saturn dealer in the Palmdale market." (Appendix Exhibit "8," p. 4.) The Arbitrator  
11 did not have the authority to take a brand away from a covered dealership and give it to another  
12 dealer within the same marketplace. (Section 747(b) and (d).) To the contrary, since GM's  
13 overall business plan is to maintain representation and the Award determined that Rally and the  
14 Chevrolet brand should be continued in this market<sup>6</sup>, the Arbitrator could not "cherry pick" one  
15 brand to take from Rally and give it to a former Saturn dealer. (*Id.*)

16 **GM Agreed to Allow Original Dealer to Represent Needed Market**

17 GM's CEO, Fritz Henderson, testified to Congress that "in the event we need to put a  
18 place—put a location back, one of the things that we committed to the Senate and I'll commit  
19 to you today, is that if we need to relocate a spot there, *we will provide the existing operator*  
20 *the opportunity to actually look at that first.*"<sup>7</sup> (Emphasis added.) [Appendix Exhibit "5," p.

21 \_\_\_\_\_  
22 <sup>5</sup> Congressional Record, H14478 (Appendix Exhibit "2").

23 <sup>6</sup> The Award found in favor of Rally to maintain its Buick, GMC, and Cadillac  
24 brands. (Appendix Exhibit "8," p. 2.) The Award also held that the Chevrolet brand should  
25 be maintained in this market. (Appendix Exhibit "8," p. 4.) The Award admitted that the  
26 "evidence showed that there is some uncertainty about the physical capacity of the new  
27 Chevrolet dealer to provide parts and service for the full range of GM brands, and the public  
will benefit by the continued availability of the parts and service from Rally." (Emphasis  
added.) (Appendix Exhibit "8," p. 5.) Thus, Rally's "covered dealership" facility is  
necessary to sell and service the Chevrolet brand in this market, in addition to the Buick,  
GMC, and Cadillac brands.

28 <sup>7</sup> June 12, 2009, House Committee on Energy and Commerce, Subcommittee on  
Oversight and Investigations, *Hearing on GM and Chrysler Dealership Closures and*

1 66]

2 GM's CEO, Fritz Henderson, testified a second time and reiterated that "if we've made  
3 mistakes in the future, we've concluded we cannot take care of customers in the location and  
4 a point needs to be put back. *We would go to whoever the individual was effected and give*  
5 *them the first chance to do that.*"<sup>8</sup> (Emphasis added.) [Appendix Exhibit "5," p. 66] The  
6 Award has determined that GM needs Chevrolet representation and Rally is entitled to continue  
7 representation as the "covered dealership" in the Palmdale market.

8 **Judicial Estoppel**

9 GM is judicially estopped from arguing a contrary position since it was successful during  
10 the bankruptcy proceeding and consummated its 363 sale. *Greer-Burger v. Temesi*, 116 Ohio  
11 St. 3de 324, 879 N.E. 2d 174, 2007-Ohio-6442, ¶ 25 ["Courts apply judicial estoppel in order  
12 to 'preserve the integrity of the courts by preserving a party from abusing the judicial process  
13 through cynical gamesmanship, achieving success on one position, then arguing the opposing  
14 to suit an exigency of the moment," quoting *Telendyne Industries, Inc. v. NLRB* (C.A. 6, 1990),  
15 911 F. 2d 1214, 1218.]

16 GM achieved its 363 sale by promising to "*provide the existing operator the opportunity*"  
17 and "*give them the first chance*" to be added back to represent GM in the market. GM took  
18 a contrary position in this arbitration and through "undue means" obtained an arbitration award  
19 seeking to take the Chevrolet brand from Rally and give it to the former Saturn dealer in the  
20 same market. Similarly, GM achieved its 363 sale by representing to the bankruptcy court that  
21 it used an "objective" DPS index standard of below 70. GM took a contrary position during the  
22 arbitration and "cherry-picked" the Retail Sales Index ("RSI") from the DPS index and errantly  
23 calculated Rally's DPS score. GM is legally bound to follow its "objective" and "stated  
24 criteria" (i.e. DPS) regarding Rally, which requires continuation and/or reinstatement of the  
25 Chevrolet brand.

26  
27 *Restructuring* (Appendix Exhibit "5").

28 <sup>8</sup> (*Id.*)

1 **5. STATEMENT OF LAW**

2 This matter involves the FAA (Federal Arbitration Act), which was Congressionally  
3 enacted and codified at 9 U.S.C.A. § 1, *et seq.*, as it applies to Petitioner Rally and Respondent  
4 GM's Federally mandated automobile industry special binding arbitration, pursuant to Section  
5 747 of the Act. This matter seeks modification or, alternatively, partial vacation of a June 8,  
6 2010 Award based upon 9 U.S.C.A. §§ 10 and 11.

7 Congress has limited the ability of Federal courts to review arbitration awards in order to  
8 promote the policy of favoring arbitration as an expeditious and relatively inexpensive means  
9 of resolving disputes. See 9 U.S.C. § 9; see also, *Schoendube Corporation v. Lucent*  
10 *Technologies, Inc.*, 442 F. 3d 737, 731 (3rd Cir. 2006). However, the Circuit Courts<sup>9</sup> have  
11 cautioned that the district court is **neither "entitled nor encouraged simply to 'rubber stamp'**  
12 **the interpretations and decisions of arbitrators."**

13 Recently, the Eight District explained that the deference owed to arbitration awards "is  
14 **not the equivalent of a grant of limitless power.**" *Stark v. Sandberg, Phoenix & von Gontard,*  
15 *P.C.*, 381 F. 3d 793, 799 (8th Cir. 2004) (citation omitted) (emphasis added). Congress has  
16 enacted protections to (1) modify or correct and/or (2) vacate an arbitration award pursuant to  
17 certain enumerated circumstances. (9 U.S.C. §§ 10-11.) In this matter, valid grounds exist on  
18 the face of the arbitration Award to modify or, alternatively, partially vacate the June 8, 2010  
19 Award.

20 **A. Modifying or Correcting Arbitration Awards**

21 The FAA delineates in 9 U.S.C. § 11 the District Court's power to modify or correct an  
22 arbitration award as follows:

23 **§11. Same; modification or correction; grounds; order**  
24 In either of the following cases the United States court in and

25 <sup>9</sup> *Matteson v. Rider Sys., Inc.*, 99 F3d 108, 113 (C.A. 3 1996) (citations omitted);  
26 *Michigan Family Resources, Inc. v. Service Employees International Union Local 517M*, 475  
27 F.3d 746, 760 (C.A. 6 2007); *Metromedia Energy, Inc. v. Ensearch Energy Services*, 409  
28 F.3d 574, 579 (C.A. 3 205); *Stark v. Sandberg, Phoenix & von Gontard, P.C.*, 381 F.3d 793,  
799 (C.A. 8 2004); *Madison Hotel v. Hotel and Restaurant Employees, Local 25, AFL-CIO*,  
128 F.3d 743, 749 (C.A. D.C. 1997); *Santa Fe Pacific Corporation v. Centra States,*  
*Southwest Areas Pension Fund*, 22 F.3d 725 (C.A. 7 1994).

1 for the district wherein the award was made may make an order  
2 modifying or correcting the award upon the application of any party  
to the arbitration -

3 (a) Where there was an evident material miscalculation of  
figures or an **evident material mistake in the description** of any  
person, thing, or property referred to in the award.

4 (b) Where the arbitrators have **awarded upon a matter**  
5 **not submitted** to them, unless it is a matter not affecting the merits  
of the decision upon the matter submitted.

6 (c) Where the award is imperfect in matter of form not  
affecting the merits of the controversy.

7 **The order may modify and correct the award, so as to**  
8 **effect the intent thereof and promote justice between the parties.”**  
(Emphasis added.)

9 In this matter, Rally seeks modification and correction, pursuant to Section 11(a), based  
10 upon the material mistake in the description in the Award (*i.e.* “covered dealership” versus  
11 Chevrolet brand) and Section 11(b) based upon the fact that there was a determination upon a  
12 matter not submitted — or could have been submitted — regarding (1) the severing of a brand  
13 from the “covered dealership” franchise and (2) the remedy to take away the Chevrolet brand  
14 from Rally’s Buick, Pontiac, GMC, and Cadillac covered dealership business and give it to a  
15 former Saturn dealer in the same marketplace. Both separate modification grounds,  
16 independently or together, justify - as a matter of law - correcting the Award to promote justice  
17 between the parties and promote the remedial purpose of Section 747.

18 Circuit Courts have held that a district court may modify an award and strike the portion  
19 of the award on a matter not submitted to the arbitrator for determination. *Off Shore Marine*  
20 *Towing v. MR23*, 412 F.3d 1254 (2005); *Totem Marine Tug and Barge, Inc. v. North American*  
21 *Towing, Inc.*, 607 F.2d 649 (1979). Similarly, an award which evidently mistakes the  
22 description of the matter being considered, also allows modification by a district court.  
23 Congress specifically explained through the plain language of the FAA, that any modification  
24 by a district court should “promote justice between the parties.” (9 U.S.C. § 11.)

25 In this matter, justice requires modification to remove the Award’s *dicta*, which  
26 inappropriately attempts to take the Chevrolet brand from the “covered dealership” and give it  
27 to a former Saturn dealers in the same marketplace. Since the Award determined that  
28 Chevrolet, Buick, GMC, and Cadillac should be maintained in the Palmdale market, the

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1 “covered dealership” (*i.e.* Rally) has the right to continue with all four (4) brands. There exists  
2 an (1) evident material mistake in the description of the “covered dealership,” which errantly  
3 excluded the Chevrolet brand, and (2) an award upon a matter not submitted or authorized for  
4 consideration, which gave the Chevrolet brand to a non-party and fashioned a remedy beyond  
5 the authority established in Section 747 of the Act. Once the Award determined that the  
6 Chevrolet brand should be continued in the local market and that Rally should be maintained,  
7 the arbitrator’s responsibility was completed.

8 **B. Vacating Arbitration Awards**

9 The FAA also delineates the following four (4) bases for a District Court to vacate or  
10 partially vacate an arbitration award in 9 U.S.C. § 10, as follows:

11 **§10. Same; vacation; grounds; rehearing**

12 (a) In any of the following cases, the United States court  
13 in an for the district wherein the award was made may make an order  
14 vacating the award upon the application of any party to the  
15 arbitration-

16 (1) Where the award was procured by **corruption, fraud,**  
17 **or undue means;**

18 (2) Where there was evident partiality or corruption in the  
19 arbitrators, or either of them;

20 (3) Where the **arbitrators were guilty of misconduct** in  
21 refusing to postpone the hearing, upon sufficient cause shown, or in  
22 refusing to hear evidence pertinent and material to the controversy;  
23 **or of any other misbehavior by which the rights of any party**  
24 **have been prejudiced; or**

25 (4) Where the **arbitrators exceeded their powers, or so**  
26 **imperfectly executed them** that a mutual, final, and definite award  
27 upon the subject matter submitted was not made.”

28 In this matter, Rally seeks partial vacation pursuant to Subsections (a)(1), (3), and (4).  
The subsections authorizing vacating an award, when an arbitrator is “guilty of misconduct” or  
“misbehavior” (*i.e.* 10(a)(3)) and/or “exceeded their powers” or “so imperfectly executed them”  
(*i.e.* 10(a)(4)), have collectively been described as the “manifest disregard” of the law by the  
United States Supreme Court. *Hall Street Associates, LLC v. Mattel, Inc.*, 552 U.S. 576, 585,  
128 S.Ct. 1396, 1404 (2008).

29 **Misconduct and Misbehavior, Section 10(a)(3)**

30 The Arbitrator in this matter was guilty of misconduct, misbehavior, and exceeded his  
31 power (*i.e.* “manifest disregard”) by (1) ruling on a matter not submitted for determination and

(2) attempting to fashion a remedy not authorized by Section 747 of the Act. Specifically, the Award attempts to carve out and take one GM brand (*i.e.* Chevrolet) from the “covered dealership” and give it to a former Saturn dealer (*i.e.* non-party) within the same market territory. Section 747 of the Act clearly limits the Arbitrator’s authority to only determine whether the “covered dealership” (*i.e.* not GM brands) should be continued, reinstated, or added “as a franchisee to the dealer network of the covered manufacturer in the geographical area where the covered dealership was located ... .” (Section 747(b).)

#### **Exceeded and Imperfectly Executed Powers, Section 10(a)(4)**

Furthermore, even if the Arbitrator could sever a brand from within the “covered dealership,” which is not specifically authorized by the Act, the remedy fashioned in the Award exceeds the Arbitrator’s power. Circuit Courts have held that arbitrators exceed or imperfectly execute their powers when they determine rights and obligations of individuals who are not parties to the arbitration proceedings. *NCR Corporation v. SAC-CO., Inc.*, 43 F.3d 1076, 1080 (6th Cir. 1995); *International Brotherhood of Electrical Workers, Local No. 265 v. O.K. Electric Co.*, 793 F.2d 214 (8th Cir. 1986); *Orion Shipping and Trading Company v. Eastern States Petroleum Corp. of Panama*, 312 F.2d 299 (2d Cir.), *cert. denied*, 373 U.S. 949, 83 S.Ct. 1679, 10 L.Ed. 2d 705 (1963). In this matter, the former Saturn dealer was awarded the franchise, even though it was not a party to the arbitration proceedings. The Award, as a matter of law, cannot determine the “rights and obligations” of a non-party regarding Rally’s Chevrolet brand and its “covered dealership” facility in Palmdale.

#### **Corruption, Fraud, and Undue Means by GM, Section 10(a)(1)**

Subsection 10(a)(1) allows for the vacation of an arbitration award if it was procured by “corruption, fraud, or undue means.” Respondent GM procured the Award in this matter through its “corruption, fraud and undue means.” (1) GM publicly stated to Congress that if its dealer network plans determined a brand needed representation in a market, then the original dealership would have the opportunity to continue in the local market. (2) GM also publicly stated to Congress and represented to the bankruptcy court that it used an “objective” DPS standard to evaluate and determine which dealerships were terminated. **BOTH** of these



1 statements were contradicted by GM in this AAA matter and require partial vacation of the  
2 Award as a matter of law and equity as to the Chevrolet brand.

3 **GM Promised to Allow the Original Dealer to Continue in a Needed Market**

4 GM's CEO, Fritz Henderson, testified to Congress that "in the event we need to put a  
5 place—put a location back, one of the things that we committed to the Senate and I'll commit  
6 to you today, is that if we need to relocate a spot there, *we will provide the existing operator*  
7 *the opportunity to actually look at that first.*"<sup>10</sup> (Emphasis added.) [Appendix Exhibit "5,"  
8 p. 66.] GM's CEO, Fritz Henderson, testified a second time and reiterated that "if we've made  
9 mistakes in the future, we've concluded we cannot take care of customers in the location and  
10 a point needs to be put back. *We would go to whoever the individual was effected and give*  
11 *them first chance to do that.*"<sup>11</sup> (Emphasis added.) [Appendix Exhibit "5," p. 66.]

12 The Award established that GM needs and plans on having Chevrolet representation in  
13 this market (Award, p. 4). However, the Award failed to apply this undisputed fact to this  
14 matter. GM needs Chevrolet representation in Palmdale and Rally is legally entitled to continue  
15 representation, as the operator and the "covered dealership," to follow GM's business plan and  
16 sworn statements to other tribunals (*i.e.* Bankruptcy Court, Congress).

17 **GM Represented an "Objective" DPS Standard to Bankruptcy Court and Congress**

18 GM is judicially estopped from arguing a contrary position since it was successful during  
19 the bankruptcy proceeding and consummated its 363 sales of assets. *Greer-Burger v. Temesi*,  
20 116 Ohio St. 3d 324, 8789 N.E. 3d 174, 2007-Ohio-6442. ¶ 25, quoting *Teledyne Industries*,  
21 *Inc. v. NLRB* (C.A. 6, 1990), 911 F.2d 1214, 1218. GM achieved its 363 sale by representing  
22 to the bankruptcy court and Congress that it used an "objective" DPS index standard of below  
23 70 to terminate a covered dealership."<sup>12</sup> GM took a contrary position during the AAA

24  
25 <sup>10</sup> June 12, 2009, House Committee on Energy and Commerce, Subcommittee  
26 on Oversight and Investigations, *Hearing on GM and Chrysler Dealership Closures and*  
*Restructuring* (Appendix Exhibit "5").

27 <sup>11</sup> (*Id.*)

28 <sup>12</sup> GM Dealer Network analysis presented to House Committee on Energy and  
Commerce, Subcommittee on Oversight and Investigations on June 12, 2009.

1 Arbitration and “cherry-picked” the RSI of the Chevrolet brand from the DPS as justification  
 2 to take the Chevrolet brand from Rally and give it to a former Saturn dealer in the same market.  
 3 GM also errantly calculated Rally’s DPS score. The Award determined that properly taking into  
 4 consideration legitimate LIFO accounting adjustments, Rally’s DPS score was approximately  
 5 85 and that Rally should be maintained in the market. (Appendix Exhibit “8,” p. 4.)

6 GM took a contrary position in this arbitration and through “undue means” obtained an  
 7 arbitration award taking the Chevrolet brand because Rally allegedly had a low RSI Score. As  
 8 a matter of law and equity, the Chevrolet brand must be continued with the “covered  
 9 dealership” because (1) Rally exceeded GM’s “objective” DPS standard and (2) GM plans on  
 10 maintaining Chevrolet representation in this local market.

# 11 **6. ARGUMENT OF LAW AND FACT**

12 That portion of the Arbitration Award which allows GM to “replace” Rally as a Chevrolet  
 13 dealership with another dealership in the Palmdale market exceeds the authority of the  
 14 Arbitrator.

15 The Federal Arbitration Act allows the District Court to strike a portion of an Arbitrator’s  
 16 Award pertaining to an issue not subject to arbitration.

17 “In sum, the Federal Arbitration Act allows a federal court to  
 18 correct a technical error, to strike all or a portion of an award  
 19 pertaining to an issue not at all subject to \*998 arbitration, and to  
 20 vacate an award that evidences affirmative misconduct in the arbitral  
 21 process or the final result or that is completely irrational or exhibits  
 a manifest disregard for the law.”

22 *Kyocera Corporation v. Prudential-Bache Trade Services* (2003) 34  
 23 F.3d 987 at 997-998.

24 Specifically, 9 USC §10(a)(4) permits the United States Court in the District wherein the  
 25 award was made to vacate that part of an award where the Arbitrator exceeds their powers.

26 “Section 10(a)(4) provides that an award may be vacated  
 27 where the arbitrators exceeded their powers. Some circuits have  
 28 specifically held that arbitrators exceed their powers when they  
 determine rights and obligations of individuals who are not parties to  
 the arbitration proceedings.”

([http://energycommerce.house.gov/Press\\_111/20090612/gmnetworkanalysis.pdf](http://energycommerce.house.gov/Press_111/20090612/gmnetworkanalysis.pdf)) [Appendix  
 Exhibit “3”]

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1 *NCR Corporation v. SAC-CO., Inc.* (1995) 43 F.3d 1076 at 1080

2 The case of NCR Corporation (*supra*) arises out of a contract dispute between a  
3 manufacturer of electronic cash registers and one of its dealers. The arbitrator in that case  
4 awarded punitive damages against the manufacturer which were ordered to be paid to dealers  
5 who were not parties to the arbitration. In that case the District Court Magistrate vacated the  
6 punitive damages part of the arbitrator's award on the grounds that the arbitrator exceeded the  
7 scope of his authority by awarding the recovery of punitive damages payable to non-parties.  
8 In its decision, the Court of Appeals, Sixth Circuit, affirmed the judgment vacating part of the  
9 arbitrator's award which exceeded his authority. The present case is analogous in that the  
10 Arbitrator exceeded his authority by allowing GM "to replace Rally as a Chevrolet dealer with  
11 a dealership operated by GM's former Saturn dealer in the Palmdale market".

12 The case of *Schoendube Corporation v. Lucent Technologies, Inc.* (2006) 442 F.3d 727  
13 examined the scope of the arbitrator's authority to award relief. In its decision the Court  
14 considered the contract requiring arbitration and the parties' demand for arbitration to determine  
15 the scope of the arbitrator's authority. In the present case the scope of the Arbitrator's authority  
16 is very narrow and specific. The federal law, Section 747(d), which authorizes this arbitration  
17 proceeding states that "the arbitrator shall balance the economic interest of the covered  
18 dealership, the economic interest of the covered manufacturer, and the economic interest of the  
19 public at large **and shall decide, based on that balancing, whether or not the covered**  
20 **dealership should be added to the dealer network of the covered manufacturer**" (Emphasis  
21 added). This is the only determination which the arbitrator is authorized to make. This  
22 arbitration proceeding does not authorize the arbitrator to decide if Rally should be replaced as  
23 the Chevrolet dealer by another dealer in Palmdale.

24 As part of the chain of events which led to the enactment of Section 747, GM has asserted  
25 that it was critical to the reorganization of the company to reduce the size of its dealer network.  
26 The Business Plans which GM submitted to the government set forth a need to reduce the  
27 number of dealerships in its dealer network. The bankruptcy of GM allowed the company the  
28 ability to threaten the rejection of dealer franchise agreements and enabled GM to obtain the

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1 “Wind-down Agreements” by which GM sought to reduce the size of its dealer body. The  
2 Answering Statement submitted by GM in the arbitration hearings, which were conducted under  
3 Section 747, details GM’s plan to reduce the total number of dealers by eliminating those  
4 dealers who had inadequate facilities or undesirable locations. The issue to be determined by  
5 the arbitrator was whether Rally should be eliminated. The premise behind Section 747 and the  
6 scope of the arbitrator’s authority was not whether underperforming dealers should be replaced  
7 with other dealers who GM believes might perform better. To include this determination in the  
8 arbitrator’s decision improperly expands the scope of the arbitrator’s authority and required  
9 modification.

10 Where an arbitrator includes in their award a form of relief or remedy not submitted to  
11 the arbitrator, the District Court may properly modify the award to exclude any such provision.  
12 In the case of *Offshore Marine Towing v. MR23* (2005) 412 F.3d 1254, the plaintiff, Offshore  
13 Marine Towing, Inc., sought to enforce a maritime salvage lien against a vessel. The District  
14 Court ordered the parties to arbitration. The arbitrator awarded plaintiff its claim under the lien  
15 and also awarded plaintiff the recovery of attorneys fees and costs. The owner of the vessel  
16 moved to modify or vacate the award of attorneys fees. The District Court modified the  
17 arbitration award to exclude the attorneys fees because attorneys fees may not be awarded in  
18 an *in rem* action for a salvage lien.

19 The Court of Appeals, Eleventh Circuit, affirmed the finding that

20 “Because attorney’s fees may not be awarded in an *in rem*  
21 action for a salvage lien and the issue of attorney’s fees was not  
22 submitted to the arbitrator, the district court correctly modified the  
23 arbitration award in favor of OMT to exclude attorney’s fees and  
24 costs”.

25 *Offshore Marine Towing Inc. (supra)* at page 1258.

26 In the present case, Petitioner Rally respectfully submits that the determination of whether  
27 or not the Chevrolet franchise at issue here might do better if the dealer (Rally) was replaced  
28 with another dealer (the former Saturn dealer) was not an issue properly before the Arbitrator  
and this determination exceeds the authority of the Arbitrator. (Section 747(d).)

In his Decision, the Arbitrator found that Rally had been a GM dealer for many years, that

its dealership facilities were adequate and that the business was economically viable. The Arbitrator determined that after taking into account the LIFO accounting conversion employed in the dealership's operating statements that the dealership's total DPS score was approximately 87, not 55 which GM used as justification for terminating the dealership. As a result, the Arbitrator concluded that the dealership should be reinstated. The arbitrator also determined that the public needed Chevrolet representation in the Palmdale market. The Arbitrator's inquiry should have ended there. Rally, as the covered dealership, should have been reinstated for all GM brands including Chevrolet.

### 7. CONCLUSION

Petitioner Rally seeks the remedy of modifying and partially vacating the AAA Award's *dicta* attempting to take the Chevrolet brand from the covered dealership and give it to a non-party, a former Saturn dealer, in the same local Palmdale market. Rally also requests any and all other equitable relief the Court deems appropriate and necessary, in order to effectuate its decision, including, but not limited to, maintaining the *status quo* until a final determination requiring GM to continue/add back the Chevrolet brand with Rally's existing and reinstated Buick, GMC, and Cadillac GM lines of new motor vehicles.

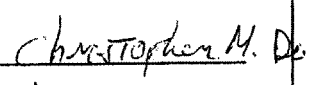
Dated: August 13, 2010

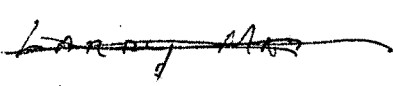
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UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET

| <b>I (a) PLAINTIFFS</b> (Check box if you are representing yourself <input type="checkbox"/> )<br>RALLY AUTO GROUP, INC.  |   | <b>DEFENDANTS</b><br>GENERAL MOTORS, LLC  |   |  |  |       |          |                    |       |   |   |  |   |  |  |                          |                            |                            |   |                            |                            |   |                            |                            |                |                            |                            |
|---|---|---|---|--|--|-------|----------|--------------------|-------|---|---|--|---|--|--|--------------------------|----------------------------|----------------------------|---|----------------------------|----------------------------|---|----------------------------|----------------------------|----------------|----------------------------|----------------------------|
| <b>(b) Attorneys</b> (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)<br>FERRUZZO & FERRUZZO LLP (949) 608-6900<br>3737 Birch Street, Suite 400<br>Newport Beach, California 92660 (SEE ATTACHED CO-COUNSEL INFORMATION)  |   | Attorneys (If Known)  |   |  |  |       |          |                    |       |   |   |  |   |  |  |                          |                            |                            |   |                            |                            |   |                            |                            |                |                            |                            |
| <b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.)<br><br><input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)<br><br><input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)  |   | <b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> - For Diversity Cases Only<br>(Place an X in one box for plaintiff and one for defendant.) <table border="1" style="width:100%"><thead><tr><th></th><th>PTF</th><th>DEF</th><th></th><th>PTF</th><th>DEF</th></tr></thead><tbody><tr><td>Citizen of This State</td><td><input type="checkbox"/> 1</td><td><input type="checkbox"/> 1</td><td>Incorporated or Principal Place of Business in this State</td><td><input type="checkbox"/> 4</td><td><input type="checkbox"/> 4</td></tr><tr><td>Citizen of Another State</td><td><input type="checkbox"/> 2</td><td><input type="checkbox"/> 2</td><td>Incorporated and Principal Place of Business in Another State</td><td><input type="checkbox"/> 5</td><td><input type="checkbox"/> 5</td></tr><tr><td>Citizen or Subject of a Foreign Country</td><td><input type="checkbox"/> 3</td><td><input type="checkbox"/> 3</td><td>Foreign Nation</td><td><input type="checkbox"/> 6</td><td><input type="checkbox"/> 6</td></tr></tbody></table> |   |  | PTF  | DEF   |          | PTF                | DEF   | Citizen of This State   | <input type="checkbox"/> 1  | <input type="checkbox"/> 1   | Incorporated or Principal Place of Business in this State   | <input type="checkbox"/> 4   | <input type="checkbox"/> 4   | Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
|   | PTF   | DEF   |   | PTF  | DEF  |       |          |                    |       |   |   |  |   |  |  |                          |                            |                            |   |                            |                            |   |                            |                            |                |                            |                            |
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| Citizen or Subject of a Foreign Country   | <input type="checkbox"/> 3  | <input type="checkbox"/> 3  | Foreign Nation  | <input type="checkbox"/> 6   | <input type="checkbox"/> 6   |       |          |                    |       |   |   |  |   |  |  |                          |                            |                            |   |                            |                            |   |                            |                            |                |                            |                            |
| <b>IV. ORIGIN</b> (Place an X in one box only.)<br><input checked="" type="checkbox"/> 1 Original <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify): <input type="checkbox"/> 6 Multi-District Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge   |   |   |   |  |  |       |          |                    |       |   |   |  |   |  |  |                          |                            |                            |   |                            |                            |   |                            |                            |                |                            |                            |
| <b>V. REQUESTED IN COMPLAINT:</b> JURY DEMAND: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (Check 'Yes' only if demanded in complaint.)<br><b>CLASS ACTION</b> under F.R.C.P. 23: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <b>MONEY DEMANDED IN COMPLAINT:</b> \$ _____  |   |   |   |  |  |       |          |                    |       |   |   |  |   |  |  |                          |                            |                            |   |                            |                            |   |                            |                            |                |                            |                            |
| <b>VI. CAUSE OF ACTION</b> (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)<br>9 USC Sections 10 and 11 - Petition to Modify/Vacate Arbitration Award   |   |   |   |  |  |       |          |                    |       |   |   |  |   |  |  |                          |                            |                            |   |                            |                            |   |                            |                            |                |                            |                            |
| <b>VII. NATURE OF SUIT</b> (Place an X in one box only.) <table border="1" style="width:100%"><thead><tr><th>OTHER STATUTES</th><th>CONTRACT</th><th>TORTS</th><th>PROPERTY</th><th>PRISONER PETITIONS</th><th>LABOR</th></tr></thead><tbody><tr><td><input type="checkbox"/> 400 State Reapportionment<br/><input type="checkbox"/> 410 Antitrust<br/><input type="checkbox"/> 430 Banks and Banking<br/><input type="checkbox"/> 450 Commerce/ICC Rates/etc.<br/><input type="checkbox"/> 460 Deportation<br/><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br/><input type="checkbox"/> 480 Consumer Credit<br/><input type="checkbox"/> 490 Cable/Sat TV<br/><input type="checkbox"/> 810 Selective Service<br/><input type="checkbox"/> 850 Securities/Commodities/Exchange<br/><input type="checkbox"/> 875 Customer Challenge 12 USC 3410<br/><input checked="" type="checkbox"/> 890 Other Statutory Actions<br/><input type="checkbox"/> 891 Agricultural Act<br/><input type="checkbox"/> 892 Economic Stabilization Act<br/><input type="checkbox"/> 893 Environmental Matters<br/><input type="checkbox"/> 894 Energy Allocation Act<br/><input type="checkbox"/> 895 Freedom of Info. Act<br/><input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice<br/><input type="checkbox"/> 950 Constitutionality of State Statutes</td><td><input type="checkbox"/> 110 Insurance<br/><input type="checkbox"/> 120 Marine<br/><input type="checkbox"/> 130 Miller Act<br/><input type="checkbox"/> 140 Negotiable Instrument<br/><input type="checkbox"/> 150 Recovery of Overpayment &amp; Enforcement of Judgment<br/><input type="checkbox"/> 151 Medicare Act<br/><input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)<br/><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits<br/><input type="checkbox"/> 160 Stockholders' Suits<br/><input type="checkbox"/> 190 Other Contract<br/><input type="checkbox"/> 195 Contract Product Liability<br/><input type="checkbox"/> 196 Franchise<br/><b>REAL PROPERTY</b><br/><input type="checkbox"/> 210 Land Condemnation<br/><input type="checkbox"/> 220 Foreclosure<br/><input type="checkbox"/> 230 Rent Lease &amp; Ejectment<br/><input type="checkbox"/> 240 Torts to Land<br/><input type="checkbox"/> 245 Tort Product Liability<br/><input type="checkbox"/> 290 All Other Real Property</td><td><b>PERSONAL INJURY</b><br/><input type="checkbox"/> 310 Airplane<br/><input type="checkbox"/> 315 Airplane Product Liability<br/><input type="checkbox"/> 320 Assault, Libel &amp; Slander<br/><input type="checkbox"/> 330 Fed. Employers' Liability<br/><input type="checkbox"/> 340 Marine<br/><input type="checkbox"/> 345 Marine Product Liability<br/><input type="checkbox"/> 350 Motor Vehicle<br/><input type="checkbox"/> 355 Motor Vehicle Product Liability<br/><input type="checkbox"/> 360 Other Personal Injury<br/><input type="checkbox"/> 362 Personal Injury-Med Malpractice<br/><input type="checkbox"/> 365 Personal Injury-Product Liability<br/><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability<br/><b>IMMIGRATION</b><br/><input type="checkbox"/> 462 Naturalization Application<br/><input type="checkbox"/> 463 Habeas Corpus-Alien Detainee<br/><input type="checkbox"/> 465 Other Immigration Actions</td><td><b>PERSONAL PROPERTY</b><br/><input type="checkbox"/> 370 Other Fraud<br/><input type="checkbox"/> 371 Truth in Lending<br/><input type="checkbox"/> 380 Other Personal Property Damage<br/><input type="checkbox"/> 385 Property Damage Product Liability<br/><b>BANKRUPTCY</b><br/><input type="checkbox"/> 422 Appeal 28 USC 158<br/><input type="checkbox"/> 423 Withdrawal 28 USC 157<br/><b>CIVIL RIGHTS</b><br/><input type="checkbox"/> 441 Voting<br/><input type="checkbox"/> 442 Employment<br/><input type="checkbox"/> 443 Housing/Accommodations<br/><input type="checkbox"/> 444 Welfare<br/><input type="checkbox"/> 445 American with Disabilities - Employment<br/><input type="checkbox"/> 446 American with Disabilities - Other<br/><input type="checkbox"/> 440 Other Civil Rights</td><td><b>PRISONER PETITIONS</b><br/><input type="checkbox"/> 510 Motions to Vacate Sentence<br/><input type="checkbox"/> 530 Habeas Corpus<br/><input type="checkbox"/> 535 General<br/><input type="checkbox"/> 535 Death Penalty<br/><input type="checkbox"/> 540 Mandamus/Other<br/><input type="checkbox"/> 550 Civil Rights<br/><input type="checkbox"/> 555 Prison Condition<br/><b>FOREIGN DISSENT</b><br/><input type="checkbox"/> 610 Agriculture<br/><input type="checkbox"/> 620 Other Food &amp; Drug<br/><input type="checkbox"/> 625 Drug Related<br/><input type="checkbox"/> 630 Seizure of Property 21 USC 881<br/><input type="checkbox"/> 630 Liquor Laws<br/><input type="checkbox"/> 640 R.R. &amp; Truck<br/><input type="checkbox"/> 650 Airline Regs<br/><input type="checkbox"/> 660 Occupational Safety/Health<br/><input type="checkbox"/> 690 Other</td><td><input type="checkbox"/> 710 Fair Labor Standards Act<br/><input type="checkbox"/> 720 Labor/Mgmt. Relations<br/><input type="checkbox"/> 730 Labor/Mgmt. Reporting &amp; Disclosure Act<br/><input type="checkbox"/> 740 Railway Labor Act<br/><input type="checkbox"/> 790 Other Labor Litigation<br/><input type="checkbox"/> 791 Empl. Ret. Inc. 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FOR OFFICE USE ONLY: Case Number: **SACV10-01236 DOC (Ex)**

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): \_\_\_\_\_

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): \_\_\_\_\_

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or  
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or  
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or  
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

|                           |   |
|---------------------------|---|
| County in this District:* | California County outside of this District; State, if other than California; or Foreign Country |
|                           | City of Palmdale, County of Los Angeles   |

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

|                           |   |
|---------------------------|---|
| County in this District:* | California County outside of this District; State, if other than California; or Foreign Country |
|                           | State of Michigan   |

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

|                           |   |
|---------------------------|---|
| County in this District:* | California County outside of this District; State, if other than California; or Foreign Country |
| County of Orange          |   |

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved.

X. SIGNATURE OF ATTORNEY (OR PRO PER): \_\_\_\_\_ Date August 13, 2010

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

| Nature of Suit Code | Abbreviation | Substantive Statement of Cause of Action   |
|---------------------|--------------|--|
| 861                 | HIA          | All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b)) |
| 862                 | BL           | All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)  |
| 863                 | DIWC         | All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))   |
| 863                 | DIWW         | All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))  |
| 864                 | SSID         | All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.  |
| 865                 | RSI          | All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))   |

**FERRUZZO & FERRUZZO, LLP**  
GREGORY J. FERRUZZO, SBN 165782

A Limited Liability Partnership,  
including Professional Corporations  
3737 Birch Street, Suite 400  
Newport Beach, California 92660

Telephone (949) 608-6900  
**MORGANSTERN, MAC ADAMS & DE VITO CO., L.P.A.**

CHRISTOPHER M. DE VITO, OH BAR 47118  
623 West Stain Clair Avenue  
Cleveland, Ohio 44113  
Telephone 9216) 687-1212

**Attorneys for Petitioner, Rally Auto Group, Inc.**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

**RALLY AUTO GROUP, INC.**

Petitioner-Covered Dealership,

v.

**GENERAL MOTORS, LLC**

Respondent-Covered Manufacturer.

Case No.

**P L A I N T I F F     C O U N S E L  
I N F O R M A T I O N**

**FERRUZZO & FERRUZZO, LLP**  
3737 Birch Street, Suite 400  
Newport Beach, California 92660  
Telephone: (949) 608-6900



**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge David O. Carter and the assigned discovery Magistrate Judge is Charles Eick.

The case number on all documents filed with the Court should read as follows:

**SACV10- 1236 DOC (Ex)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

☐ **Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

☒ **Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

☐ **Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

## Name &amp; Address:

FERRUZZO &amp; FERRUZZO LLP

Gregory J. Ferruzzo, SBN 165782

3737 Birch Street, Suite 400

Newport Beach, California 92660

(949) 608-6900 (SEE ATTACHED CO-COUNSEL INFORMATION)

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

RALLY AUTO GROUP, INC.

CASE NUMBER

SACV10-01236 DOC (Ex)

PLAINTIFF(S)

v.

GENERAL MOTORS, LLC

DEFENDANT(S).

SUMMONS

TO: DEFENDANT(S):

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, FERRUZZO & FERRUZZO LLP \*, whose address is 3737 Birch Street, Suite 400, Newport Beach, California 92660 \*. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

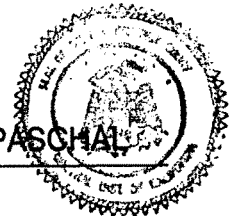
(\* SEE ATTACHED CO-COUNSEL INFORMATION)

Clerk, U.S. District Court

Dated: AUG 13 2010By: ROLLS ROYCE PASCHAL

Deputy Clerk

(Seal of the Court)



1144

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

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Respondent-Covered Manufacturer.

Case No.

**PLAINTIFF COUNSEL  
INFORMATION**

**FOR OFFICE USE ONLY**

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Newport Beach, California 92660  
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